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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/086,857 05/29/98 FREDERICK

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PM82/0816

EXAMINER

BUTLER, M

ART UNIT

PAPER NUMBER

3651

DATE MAILED:

08/16/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademark**

# Office Action Summary

Application No.

09/086,857

Applicant(s)

Frederick et al.

Examiner

Micha I E. Butler

Group Art Unit

3651



☒ Responsive to communication(s) filed on May 23, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 1-47 is/are pending in the application.

Of the above, claim(s) 4-23 and 27-44 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-3, 24-26, and 45-47 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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**DETAILED ACTION**

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action, and apply to this and any subsequent Office Actions.

***Election/Restriction***

2. The applicant's request for withdrawal of the restriction requirement predicated upon allowance of an independent linking claim is acknowledge.

3. The final restriction requirement is maintained in view of the rejected status of the claims.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

5. Claims 1, 3, and 24-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Lavigue et al. as in paper number 8 along with newly added claims 45 and 47 rejected under 35 U.S.C. 102(b) as being anticipated by Lavigue et al.. Lavigue et al.. discloses: (Re: cl 1, 24) a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users (col. 10 L 27-61, the supervisor id is recognized , compared and the computer is operable contingent upon that comparison; col. 6 L 20-59); the interface includes

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an input device (col. 5 L 50-65); a refrigerator wherein a storage location for at least one medical item is located in an interior area of the refrigerator., the refrigerator including a door (col. 7 L 36-52); a lock module operatively attached to the refrigerator, the lock responsive to the computer (col. 11 L 39-43); the input device of the interface corresponding to the data representative of an authorized user stored in the data store (col. 10 L 27-39), the computer enabling user to input indicia corresponding to the medical item (col. 9 L 17-34), the computer operative to output a signal which changes the lock (col. 11 L 39-43; col. 8 L 59-62); computer is operative responsive to input of the item indicia to unlock the module ( col. 8 L 24-30; col. 8 L 58-59).

(Re: cl 3) door is operative to generate an open signal responsive to the door opening computer is operative to the open signal to change the lock module to the locked condition (col. 6 L 47-56); the computer operative responsive to the lock condition to change the condition of the lock (col. 8 L 60-62; Fig. 5, #113; Fig. 3, #118 & 139; (re: cl 25) door sensor, a latching device for selectively maintaining the lock module in the locked and unlocked conditions (col. 6 L 47-56; col. 7L 10-35).

6. Claims 1 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Colson, Jr. et al. '450. Colson, Jr. et al. '450 discloses: (Re: cl 1, 24) a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users (col. 5 L 17-29; Fig. 1, #21); the interface includes an input device (col. 5 L 17-29); a refrigerator wherein a storage location for at least one medical item is located in an interior area of the refrigerator., the refrigerator including a door (col. 3 L 1-16; col. 6 L 32-67; Fig. 1, #25); a lock module operatively attached to the refrigerator, the lock responsive to the computer (col. 2 L 50-55; col. 5 L 20-25; col. 6 L 48-67); the input device of the interface corresponding to the data

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representative of an authorized user stored in the data store, the computer enabling user to input indicia corresponding to the medical item (col. 5 L 20-40), the computer operative to output a signal which changes the lock (col. 5 L 20-25) the computer is operative responsive to input of the item indicia to unlock the module; computer is operative to the open signal to change the lock module to the locked condition (col. 6 L 47-56).

7. Claims 45 is rejected under 35 U.S.C. 102(b) as being anticipated by Pearson '232. Pearson '232 discloses: a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users (col. 4 L 60-col. 5 L 5 with col. 6 L 18-23); the interface includes an input device (col. 53 L 5-20); a lock in operative connection with the computer, the lock is responsive to the computer (col. 3 L 22-38); the input device of the interface corresponding to the data representative of an authorized user stored in the data store, the computer enabling user to input indicia corresponding to the medical item (col. 4 L 33-49), the computer operative to output a signal which changes the lock (col. 5 L 1-8) the computer is operative responsive to input of the item indicia to unlock the module (col. 6 L 6-18); computer is operative to the open signal to change the lock module to the locked condition (col. 6 L 47-56).

8. Claims 45-46 are rejected under 35 U.S.C. 102(e) as being anticipated by Higham '456. Higham '456 discloses: a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users (col. 13 L 30-41); the interface includes an input device (col. 13 L 11-40; col. 10 L 46-53); a lock in operative connection with the computer, the lock is responsive to the computer (col. 10 L 11-29); the input device of the interface corresponding to the data representative of an authorized user stored in the data store, the computer enabling user to input indicia corresponding to the medical item (col. 13 L 11-30),

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the computer operative to output a signal which changes the lock (col. 13 L 11-30) the computer is operative responsive to input of the item indicia to unlock the module (col. 13 L 11-30); computer is operative to the open signal to change the lock module to the locked condition (col. 14 L 40-45);

(re:cl 46) the lock comprises a visual indicator (col. 11 L 41-65).

9. Claim 45 is rejected under 35 U.S.C. 102(b) as being anticipated by Colson, Jr. et al.

'297. Colson, Jr. et al. '297 discloses: a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users, the interface includes an input device, a lock in operative connection with the computer, the lock is responsive to the computer, the input device of the interface corresponding to the data representative of an authorized user stored in the data store, the computer enabling user to input indicia corresponding to the medical item, the computer operative to output a signal which changes the lock the computer is operative responsive to input of the item indicia to unlock the module, computer is operative to the open signal to change the lock module to the locked condition (col. 4 L 39-53).

### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-3 and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lavigue et al.. Lavigue et al. discloses the elements previously discussed and further discloses:

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(Re: cl 2) a visual indicator proximate the lock (col. 11 L 3-43) ; the lock has a solenoid (col. 7 L 24-26). It would have been obvious to place the visual indicator on the lock as a matter of design choice because proximate rather than precise mounting location of a visual indicator is sufficient to indicate to the user the identification of the location of the lock corresponds with the compartment(s) and the status of the lock corresponds with the compartment access commands from the computer. The examiner takes official notice that the use of permanent magnets in solenoids is well known. It would have been obvious to make the solenoid with a permanent magnet because such a construction averts the need for plural windings.

As per applicant's challenge of permanent magnet solenoids not being well known in the dispensing art, the examiner cites in rebuttal Nemoto (abstract), Keskin et al.(abstract), Tabata (abstract).

12. Claims 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higham et al. '456. Higham et al discloses the elements previously disclosed and further discloses: (re:cl 47) the lock comprises a door sensor, the door sensor is operative to generate an open signal responsive to opening the door (col. 11 L 23-41).

Higham et al '456 impliedly suggests the computer is operative responsive to the open signal to change the lock to the locked condition whenever the door is closed (col. 10 L 11-29; col. 13 L 44-59). As the processor of Higham et al '456 only permits one door open a time and the button opening embodiment necessitates a button being pressed before opening, it is suggested that all doors will be locked upon closure. It would have been obvious for the processor of Higham et al '456 to lock the door upon closure to avoid the confusion prone with multiple drawers open as suggested and taught by Higham et al '456.

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13. Claims 45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colson Jr., et al. '297. Colson Jr, et al. discloses the elements previously disclosed and further discloses: (re:cl 46) the lock comprises a visual indicator illuminating the region of the store medication item (col. 3 L 10-16). It would have been obvious for Colson Jr. et al. to modify the illumination to a visual indicator on released lock because such an indication can lead a user to a desired and open receptical.

14. Claims 1, 3, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lavigue et al. in view of Aten et al. as in paper number 8 as are newly added claims 45 and 47. Lavigue et al. discloses the elements previously disclosed and further discloses: the lock has a solenoid (col. 7 L 24-26). It would have been obvious to make the refrigerated dispenser of Laviue et al. with a solenoid having a permanent magnet because a construction averts the need for plural windings as taught by Aten et al. (col. 9 L 1-30).

15. Claims 1-3 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colson, Jr. et al. '450 in view of Lavigne et al. as in paper number 8. Colson, Jr. et al. '450 discloses the elements previously disclosed and further discloses: a latching device for selectively maintaining the lock module in the locked and unlocked conditions (col. 5 L 6-16 ; col. 8 L 24-30; col. 8 L 58-59); visual indicators corresponding to each compartment which is unlocked by the locks (col. 7 L .35-46). Colson, Jr. et al. '450 does not disclose: a door sensor; door is operative to generate an open signal responsive to the door opening, the visual indicator is located on the lock. Lavigne et al. discloses a door sensor with the door operative to generate an open signal responsive to the door opening. It would have been obvious to substitute location of the visual indicator to the lock as a matter of design choice because proximate placement of a visual indicator is sufficient to indicate to the user the location of the compartment(s) and the



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status of the lock corresponds with the compartment access commands from the computer (col. 6 L 47-56; col. 7L 10-35). It would have been obvious to use a sensor to detect the opening of the door as a means of saving power and recording removal of the item as taught by Colson, Jr. et al. '450.

16. Claims 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blechl in view of Weinberger. Blechl discloses: (re cl 45) a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users (col. 4 L 20-38); the interface includes an input device (col. 4 L 39-50); a lock in operative connection with the computer, the lock is responsive to the computer (col. 4 L 39-50); the input device of the interface corresponding to the data representative of an authorized user stored in the data store, the computer enabling user to input indicia corresponding to the medical item (col. 4 L 39-50), the computer operative to output a signal which changes the lock (col. 9 L 44-55) the computer is operative responsive to input of the item indicia to unlock the module (col. 9 L 36-55); computer is operative to the open signal to change the lock module to the locked condition (col. 4 L 39-55).

(re:cl 46) the lock comprises a visual indicator (col. 7 L 13-34) ;(re:cl 47) the lock comprises a door sensor, the door sensor is operative to generate an open signal responsive to opening the door, the computer is operative responsive to the open signal to change the lock to the locked condition whenever the door is closed (col. 13 L 20-30).

It would have been obvious for Blechl to include a visual indicator as a part of a lock module because a visual signal can direct the user to the correct door/drawer as taught by Weinberger. It would have been obvious for Blechl to have the computer to lock the door

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responsive to a sensor indicating door closure because locking the door can reduce unauthorized access as taught by Weinberger.

17. Claims 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colson, Jr. et al. '297 in view of Lavigne et al. as in paper number 8. Colson, Jr. et al. '450 discloses the elements previously disclosed and further discloses: a latching device for selectively maintaining the lock module in the locked and unlocked conditions (col. 5 L 6-16 ; col. 8 L 24-30; col. 8 L 58-59); visual indicators corresponding to each compartment which is unlocked by the locks (col. 7 L .35-46). Colson, Jr. et al. '297 does not disclose: a door sensor; door is operative to generate an open signal responsive to the door opening, the visual indicator is located on the lock. Lavigne et al. discloses a door sensor with the door operative to generate an open signal responsive to the door opening. It would have been obvious to move the visual indicator corresponding to the lock as a matter of design choice because placing the visual indicator proximate the source is sufficient to indicate to the user the location of the compartment(s) thereby reducing dispensing errors and the status of the lock as exemplified corresponds with the compartment access commands from the computer (col. 6 L 47-56; col. 7L 10-35). It would have been obvious to use a sensor to detect the opening of the door as a means of saving power and recording removal of the item as taught by Colson, Jr. et al. '297.

### ***Response to Arguments***

18. The applicant's arguments have been carefully considered by the examiner but are insufficient in overcoming the rejections in view of the prior art.

The applicant attempts to rely upon a CIP priority to bring the priority date of previously rejected claim 24 and newly added claim 45 of the instant application to less than one year subsequent the publication date of the applied references. However the applicant is entitled to

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the priority date of a parent of a CIP only with respect to matter present in the parent application. There is a rebuttable presumption that the claims rely upon at least one element of new matter (i.e., a lock module mounted to the exterior surface of the housing structure or the refrigeration unit) else applicant would not have the need to add new matter and would file a continuation application rather than a continuation-in-part application. The applicant, in spite of his superior familiarity with his parent application, has not shown where the elements are located in the parent application nor has the applicant even asserted the parent application contained each element of the claims covered by the 131 affidavit. As such the 102(b) reference date status of the cited art has not been overcome.

Further, if applicant had been able to and had elected to identify that his claimed subject matter had a priority date which would shift the reference to a 102(e) status, the applicant would need swear behind the priority date of the reference. The applicant has merely attempted to swear behind the 1994 filing date of the Colson, Jr. et al.'450 reference rather than the 1993 priority date of Colson, Jr. et al.'s parent application, Colson, Jr. et al. '297.

The claimed apparatus structural element is for a visual indicator located on the lock. The final clause of the claim in which the applicant focuses on is a functional limitation not operatively integrated within the claim. However, applicant's functional language is suggested as being used for location indicators via Lavigne LED's the "lock command and LED on/off" (col. 7 L 34-35) status and control lines are suggestive of an LED operative responsive to the lock condition if applicant were to amend the claim as per applicant's arguments.

Concerning the applicants request for locations, each claim being discussed follows the "re" (abbreviated for "regarding") with the location of the cited claim elements. The subsequently discussed claim element, "cl 2" –is an abbreviation for claim number 2.

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Pertaining to claim 1, the user inputs identification data which is compared to data representative of authorized users (col. 5 L 17-20). Further input data corresponds with item indicia input to the computer corresponding to a medical item (col. 2 L 1-6). The computer is responsive to input of item indicia to unlock a lock (col. 7 L 34-45). Lock condition responsive to the lock responsive to the input of indicia corresponding to a medical item (col. 7 L 24-46).

Contrary to applicants assertion, claim 25 does not recite the door will be locked the next time it is closed as applicant alleges.

### *Conclusion*

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (703) 308-8344.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis, can be reached on (703) 308-2560. The fax number for the Group is (703) 305-7687.

A handwritten signature in cursive script that reads "Michael E. Butler".

Michael E. Butler  
Examiner